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S.L.C.

McCaskill

Webb

AMENDMENT NO.

Calendar No.

Purpose: To provide for the study and investigation of war-time contracts and contracting processes in Operation Iraqi Freedom and Operation Enduring Freedom.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

H. R. 1585

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cc	By	for Webb - others	rt-
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Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. WEBB (for himself, Mrs. MCCASKILL, Ms. KLOBUCHAR, Mr. BROWN, Mr. CASEY, Mr. TESTER, Mr. CARDIN, Mr. WHITEHOUSE, Mr. SANDERS, Mr. LEVIN, Mr. CARPER, Mrs. FEINSTEIN, Mr. KERRY, Mr. JOHNSON, Mrs. BOXER, Mr. OBAMA, Mr. LEAHY, Mr. HARKIN, Ms. STABENOW, Mr. DODD, Ms. LANDRIEU, Mr. FEINGOLD, Mr. BAYH, Mr. PRYOR, Mr. BYRD, Mrs. CLINTON, Mr. DURBIN, Mr. LAUTENBERG, Mr. REED, Mr. ROCKEFELLER, Mr. SALAZAR, and Mr. HAGEL)

Viz:

1 At the end of subtitle C of title XV, add the following:

1 **SEC. 1535. STUDY AND INVESTIGATION OF WARTIME CON-**
2 **TRACTS AND CONTRACTING PROCESSES IN**
3 **OPERATION IRAQI FREEDOM AND OPER-**
4 **ATION ENDURING FREEDOM.**

5 (a) COMMISSION ON WARTIME CONTRACTING.—

6 (1) ESTABLISHMENT.—There is hereby estab-
7 lished a commission to be known as the “Commis-
8 sion on Wartime Contracting” (in this subsection re-
9 ferred to as the “Commission”).

10 (2) MEMBERSHIP MATTERS.—

11 (A) MEMBERSHIP.—The Commission shall
12 be composed of 8 members, as follows:

13 (i) 2 members shall be appointed by
14 the Majority Leader of the Senate, in con-
15 sultation with the Chairmen of the Com-
16 mittee on Armed Services and the Com-
17 mittee on Homeland Security and Govern-
18 mental Affairs of the Senate.

19 (ii) 2 members shall be appointed by
20 the Speaker of the House of Representa-
21 tives, in consultation with the Chairmen of
22 the Committee on Armed Services and the
23 Committee on Oversight and Government
24 Reform of the House of Representatives.

25 (iii) 1 member shall be appointed by
26 the Minority Leader of the Senate, in con-

1 sultation with the Ranking Minority Mem-
2 bers of the Committee on Armed Services
3 and the Committee on Homeland Security
4 and Governmental Affairs of the Senate.

5 (iv) 1 member shall be appointed by
6 the Minority Leader of the House of Rep-
7 resentatives, in consultation with the
8 Ranking Minority Member of the Com-
9 mittee on Armed Services and the Com-
10 mittee on Oversight and Government Re-
11 form of the House of Representatives.

12 (v) 1 member shall be appointed by
13 the Secretary of Defense.

14 (vi) 1 member shall be appointed by
15 the Secretary of State.

16 (B) DEADLINE FOR APPOINTMENTS.—All
17 appointments to the Commission shall be made
18 not later than 90 days after the date of the en-
19 actment of this Act.

20 (C) CHAIRMAN AND VICE CHAIRMAN.—

21 (i) CHAIRMAN.—The chairman of the
22 Commission shall be a member of the
23 Commission selected by the members ap-
24 pointed under clauses (i) and (ii) of sub-
25 paragraph (A), but only if approved by the

1 vote of a majority of the members of the
2 Commission.

3 (ii) VICE CHAIRMAN.—The vice chair-
4 man of the Commission shall be a member
5 of the Commission selected by the mem-
6 bers appointed under clauses (iii) and (iv)
7 of subparagraph (A), but only if approved
8 by the vote of a majority of the members
9 of the Commission.

10 (D) VACANCY.—In the event of a vacancy
11 in the Commission, the individual appointed to
12 fill the membership shall be of the same polit-
13 ical party as the individual vacating the mem-
14 bership.

15 (3) DUTIES.—

16 (A) GENERAL DUTIES.—The Commission
17 shall study and investigate the following mat-
18 ters:

19 (i) Federal agency contracting for the
20 reconstruction of Iraq and Afghanistan.

21 (ii) Federal agency contracting for the
22 logistical support of coalition forces in Op-
23 eration Iraqi Freedom and Operation En-
24 during Freedom.

1 (iii) Federal agency contracting for
2 the performance of security and intel-
3 ligence functions in Operation Iraqi Free-
4 dom and Operation Enduring Freedom.

5 (B) SCOPE OF CONTRACTING COVERED.—
6 The Federal agency contracting covered by this
7 paragraph includes contracts entered into both
8 in the United States and abroad for the per-
9 formance of activities described in subpara-
10 graph (A), whether performed in the United
11 States or abroad.

12 (C) PARTICULAR DUTIES.—In carrying out
13 the study under this paragraph, the Commis-
14 sion shall assess—

15 (i) the extent and impact of the reli-
16 ance of the Federal Government on con-
17 tractors to perform functions (including se-
18 curity, intelligence, and management func-
19 tions) in Operation Iraqi Freedom and Op-
20 eration Enduring Freedom;

21 (ii) the performance of the contracts
22 under review, and the mechanisms used to
23 manage the performance of the contracts
24 under review;

1 (iii) the extent of waste, fraud, abuse,
2 or mismanagement under such contracts;

3 (iv) the extent to which those respon-
4 sible for such waste, fraud, abuse, or mis-
5 management have been held financially or
6 legally accountable;

7 (v) the appropriateness of the organi-
8 zational structure, policies, practices, and
9 resources of the Department of Defense
10 and the Department of State for handling
11 contingency contract management and sup-
12 port; and

13 (vi) the extent of the misuse of force
14 and violations of the laws of war or Fed-
15 eral law by contractors.

16 (4) REPORTS.—

17 (A) INTERIM REPORT.—On January 15,
18 2009, the Commission shall submit to Congress
19 an interim report on the study carried out
20 under paragraph (3), including the results and
21 findings of the study as of that date.

22 (B) OTHER REPORTS.—The Commission
23 may from time to time submit to Congress such
24 other reports on the study carried out under

1 paragraph (3) as the Commission considers ap-
2 propriate.

3 (C) FINAL REPORT.—Not later than two
4 years after the date of the appointment of all
5 of the members of the Commission under para-
6 graph (2), the Commission shall submit to Con-
7 gress a report on the study carried out under
8 paragraph (3). The report shall—

9 (i) include the findings of the Com-
10 mission;

11 (ii) identify lessons learned on the
12 contracting covered by the study; and

13 (iii) include specific recommendations
14 for improvements to be made in—

15 (I) the process for developing
16 contract requirements for wartime
17 contracts and contracts for contin-
18 gency operations;

19 (II) the process for awarding
20 contracts and task orders for wartime
21 contracts and contracts for contin-
22 gency operations;

23 (III) the process for managing
24 and providing oversight for the per-

1 formance of wartime contracts and
2 contracts for contingency operations;

3 (IV) the process for holding con-
4 tractors and their employees account-
5 able for waste, fraud, abuse, or mis-
6 management under wartime contracts
7 and contracts for contingency oper-
8 ations;

9 (V) the process for determining
10 which functions are inherently govern-
11 mental and which functions are ap-
12 propriate for performance by contrac-
13 tors in an area of combat operations
14 (including an area of a contingency
15 operation), including a determination
16 whether the use of civilian contractors
17 to provide security in an area of com-
18 bat operations is a function that is in-
19 herently governmental;

20 (VI) the organizational structure,
21 resources, policies, and practices of
22 the Department of Defense and the
23 Department of State handling con-
24 tract management and support for

1 wartime contracts and contracts for
2 contingency operations; and

3 (VII) the process by which roles
4 and responsibilities with respect to
5 wartime contracts and contracts for
6 contingency operations are distributed
7 among the various departments and
8 agencies of the Federal Government,
9 and interagency coordination and
10 communication mechanisms associated
11 with wartime contracts and contracts
12 for contingency operations.

13 (5) OTHER POWERS AND AUTHORITIES.—

14 (A) HEARINGS AND EVIDENCE.—The
15 Commission or, on the authority of the Com-
16 mission, any subcommittee or member thereof,
17 may, for the purpose of carrying out this sub-
18 section—

19 (i) hold such hearings and sit and act
20 at such times and places, take such testi-
21 mony, receive such evidence, administer
22 such oaths (provided that the quorum for
23 a hearing shall be three members of the
24 Commission); and

1 (ii) provide for the attendance and
2 testimony of such witnesses and the pro-
3 duction of such books, records, correspond-
4 ence, memoranda, papers, and documents,
5 as the Commission or such designated sub-
6 committee or designated member may deter-
7 mine advisable.

8 (B) INABILITY TO OBTAIN DOCUMENTS OR
9 TESTIMONY.—In the event the Commission is
10 unable to obtain testimony or documents need-
11 ed to conduct its work, the Commission shall
12 notify the committees of Congress of jurisdic-
13 tion and appropriate investigative authorities.

14 (C) ACCESS TO INFORMATION.—The Com-
15 mission may secure directly from the Depart-
16 ment of Defense and any other department or
17 agency of the Federal Government any informa-
18 tion or assistance that the Commission con-
19 siders necessary to enable the Commission to
20 carry out the requirements of this subsection.
21 Upon request of the Commission, the head of
22 such department or agency shall furnish such
23 information expeditiously to the Commission.
24 Whenever information or assistance requested
25 by the Commission is unreasonably refused or

1 not provided, the Commission shall report the
2 circumstances to Congress without delay.

3 (D) PERSONNEL.—The Commission shall
4 have the authorities provided in section 3161 of
5 title 5, United States Code, and shall be subject
6 to the conditions set forth in such section, ex-
7 cept to the extent that such conditions would be
8 inconsistent with the requirements of this sub-
9 section.

10 (E) DETAILEES.—Any employee of the
11 Federal Government may be detailed to the
12 Commission without reimbursement from the
13 Commission, and such detailee shall retain the
14 rights, status, and privileges of his or her reg-
15 ular employment without interruption.

16 (F) SECURITY CLEARANCES.—The appro-
17 priate departments or agencies of the Federal
18 Government shall cooperate with the Commis-
19 sion in expeditiously providing to the Commis-
20 sion members and staff appropriate security
21 clearances to the extent possible pursuant to ex-
22 isting procedures and requirements, except that
23 no person shall be provided with access to clas-
24 sified information under this section without
25 the appropriate security clearances.

1 (G) VIOLATIONS OF LAW.—

2 (i) REFERRAL TO ATTORNEY GEN-
3 ERAL.—The Commission may refer to the
4 Attorney General any violation or potential
5 violation of law identified by the Commis-
6 sion in carrying out its duties under this
7 subsection.

8 (ii) REPORTS ON RESULTS OF REFER-
9 RAL.—The Attorney General shall submit
10 to Congress a report on each prosecution,
11 conviction, resolution, or other disposition
12 that results from a referral made under
13 this subparagraph.

14 (6) TERMINATION.—The Commission shall ter-
15minate on the date that is 60 days after the date of
16the submittal of its final report under paragraph
17(4)(C).

18 (7) CONTINGENCY OPERATION DEFINED.—In
19this subsection, the term “contingency operation”
20has the meaning given that term in section 101 of
21title 10, United States Code.

22 (b) INVESTIGATION OF WASTE, FRAUD, ABUSE, AND
23 MISMANAGEMENT.—

24 (1) IN GENERAL.—The Special Inspector Gen-
25eral for Iraq Reconstruction shall, in collaboration

1 with the Inspector General of the Department of De-
2 fense, the Inspector General of the Department of
3 State, and the Inspector General of the United
4 States Agency for International Development, con-
5 duct a series of audits to identify potential waste,
6 fraud, abuse, or mismanagement in the performance
7 of—

8 (A) Department of Defense contracts and
9 subcontracts for the logistical support of coali-
10 tion forces in Operation Iraqi Freedom and Op-
11 eration Enduring Freedom; and

12 (B) Federal agency contracts and sub-
13 contracts for the performance of security and
14 reconstruction functions in Operation Iraqi
15 Freedom and Operation Enduring Freedom.

16 (2) SCOPE OF AUDITS OF CONTRACTS.—Each
17 audit conducted pursuant to paragraph (1)(A) shall
18 focus on a specific contract, task order, or site of
19 performance under a contract or task order and
20 shall examine, at a minimum, one or more of the fol-
21 lowing issues:

22 (A) The manner in which requirements
23 were developed.

24 (B) The procedures under which the con-
25 tract or task order was awarded.

1 (C) The terms and conditions of the con-
2 tract or task order.

3 (D) The contractor's staffing and method
4 of performance, including cost controls.

5 (E) The efficacy of Department of Defense
6 management and oversight, Department of
7 State management and oversight, and United
8 States Agency for International Development
9 management and oversight, including the ade-
10 quacy of staffing and training of officials re-
11 sponsible for such management and oversight.

12 (F) The flow of information from the con-
13 tractor to officials responsible for contract man-
14 agement and oversight.

15 (3) SCOPE OF AUDITS OF OTHER CON-
16 TRACTS.—Each audit conducted pursuant to para-
17 graph (1)(B) shall focus on a specific contract, task
18 order, or site of performance under a contract or
19 task order and shall examine, at a minimum, one or
20 more of the following issues:

21 (A) The manner in which the requirements
22 were developed and the contract or task order
23 was awarded.

1 (B) The manner in which the Federal
2 agency exercised control over the contractor's
3 performance.

4 (C) The extent to which operational field
5 commanders are able to coordinate or direct the
6 contractor's performance in an area of combat
7 operations.

8 (D) The extent to which the functions per-
9 formed were appropriate for performance by a
10 contractor.

11 (E) The degree to which contractor em-
12 ployees were properly screened, selected,
13 trained, and equipped for the functions to be
14 performed.

15 (F) The nature and extent of any incidents
16 of misconduct or unlawful activity by contractor
17 employees.

18 (G) The extent to which any incidents of
19 misconduct or unlawful activity were reported,
20 documented, investigated, and (where appro-
21 priate) prosecuted.

22 (4) CONTINUATION OF SPECIAL INSPECTOR
23 GENERAL.—

24 (A) IN GENERAL.—Notwithstanding sec-
25 tion 3001(o) of the Emergency Supplemental

1 Appropriations Act for Defense and for the Re-
2 construction of Iraq and Afghanistan, 2004
3 (Public Law 108–106; 5 U.S.C. App. 8G note),
4 the Office of the Special Inspector General for
5 Iraq Reconstruction shall not terminate until
6 the date that is 60 days after the date of the
7 submittal under paragraph (4)(C) of subsection
8 (a) of the final report of the Commission on
9 Wartime Contracting established by subsection
10 (a).

11 (B) REAFFIRMATION OF CERTAIN DUTIES
12 AND RESPONSIBILITIES.—Congress reaffirms
13 that the Special Inspector General for Iraq Re-
14 construction retains the duties and responsibil-
15 ities in sections 4 of the Inspector General Act
16 of 1978 (5 U.S.C. App. 4; relating to reports
17 of criminal violations to the Attorney General)
18 and section 5 of the Inspector General Act of
19 1978 (5 U.S.C. App. 5; relating to reports to
20 Congress) as expressly provided in subsections
21 (f)(3) and (i)(3), respectively, of section 3001
22 of the Emergency Supplemental Appropriations
23 Act for Defense and for the Reconstruction of
24 Iraq and Afghanistan, 2004.

1 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
2 authorized to be appropriated such sums as may be re-
3 quired to carry out the provisions of this section.